

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 KIM M. SETTLES
Deputy Attorney General
4 State Bar No. 116945
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2138
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. *2013-215*

12 **ERLINDA F. BIACO, aka ERLINDA**
13 **MATA, aka ERLINDA BIACO-MATA**
14 **1201 Waverly Circle**
Hercules, CA 94547

A C C U S A T I O N

15 **Registered Nurse License No. 528763**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about December 30, 1996, the Board of Registered Nursing issued Registered
23 Nurse License Number 528763 to Erlinda F. Biaco, aka Erlinda Mata, aka Erlinda Biaco-Mata
24 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
25 the charges brought in this Accusation and will expire on November 30, 2012, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board of Registered Nursing (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
6 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
7 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
8 Nursing Practice Act.

9 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
11 licensee or to render a decision imposing discipline on the license.

12 **STATUTORY/REGULATORY PROVISIONS**

13 6. Section 2761 of the Code states:

14 "The board may take disciplinary action against a certified or licensed nurse or deny an
15 application for a certificate or license for any of the following:

16 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

17 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
18 functions."

19 7. California Code of Regulations, title 16, section 1442, states:

20 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
21 the standard of care which, under similar circumstances, would have ordinarily been exercised by
22 a competent registered nurse. Such an extreme departure means the repeated failure to provide
23 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
24 situation which the nurse knew, or should have known, could have jeopardized the client's health
25 or life."

26 **COST RECOVERY**

27 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 9. Respondent has subjected her license to disciplinary action under section 2761,
6 subdivision (a)(1) on the grounds of gross negligence, based on the following acts and/or
7 omissions:

8 10. On or about May 19, 2011 through May 20, 2011, while employed as a registered
9 nurse on the Medical/Surgical Unit at Sutter Solano Medical Center in Vallejo, California,
10 Respondent was assigned to provide care to Patient A¹. Respondent acted with gross negligence
11 when she provided or failed to provide care, failed to document and/or provide patient care, and
12 failed to notify incoming staff that Patient A had been admitted to the medical/surgical unit. The
13 circumstances are as follows:

14 A. On May 19, 2011, at approximately 10:30 p.m., Patient A was transferred from
15 the emergency room to the medical/surgical unit and assigned to Respondent. Patient A
16 presented to the emergency room with complaints of abdominal pain all week, and chronic pain
17 since 6:30 p.m. Patient A had a history of bowel obstruction. Respondent asked a Nursing
18 Assistant to perform a "vitals check" on Patient A. The Nursing Assistant checked Patient A's
19 vitals at approximately 10:45 p.m., and informed Respondent that Patient A had low oxygen
20 saturation.

21 B. On May 20, 2011, at approximately 12:15 a.m., Respondent gave to the night shift
22 nurse a verbal report regarding Patient A. Patient A was assessed by the night shift nurse at
23 approximately 12:30 a.m. The assesment revealed the following: (1) Patient A was in severe
24 pain, (2) the intravenous fluids were not set up per physician's order, and, (3) the nasogastric
25 suction was not properly connected and was leaking onto Patient A's bed. Respondent did
26 document in Patient A.'s chart.

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28 ¹ The patient name will be released to Respondent pursuant to a request for discovery.

1 11. Respondent failed to conduct and/or document a complete assessment of Patient A on
2 May 19, 2011. As a result, Patient A was in severe pain, the intravenous fluids were not set up
3 per the Physician's order, and the nasogastric suction was not properly connected and was leaking
4 onto the patient's bed.

5 12. Respondent failed to timely report Patient A's condition to the night shift nurse.
6 Respondent did not report to the night shift nurse Patient A.'s condition until approximately 45
7 minutes after the shift change.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 528763, issued to Erlinda
12 F. Biaco, aka Erlinda Mata, aka Erlinda Biaco-Mata.

13 2. Ordering Erlinda F. Biaco, aka Erlinda Mata, aka Erlinda Biaco-Mata to pay the
14 Board of Registered Nursing the reasonable costs of the investigation and enforcement of this
15 case, pursuant to Business and Professions Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: SEPTEMBER 26, 2012

18 *for* LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

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